

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

April 24, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 09HD-017

Hawaii

Cancellation of Governor's Executive Order No. 4143 and Reset-Aside to  
Department of Hawaiian Home Lands for Makuu Well and Reservoir Site and  
Access and Utility Easement Purposes, Kaohe, Puna, Hawaii, Tax Map Key: 3rd/  
1-5-008:001 por.

CONTROLLING AGENCY:

Water Board of the County of Hawaii, 345 Kekuanaoa Street, Ste. 20, Hilo, HI 96720.

APPLICANT:

Department of Hawaiian Home Lands, P.O. Box 1879, Honolulu, HI 96805.

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kaohe situated at Kaohe, Puna, Hawaii, identified by Tax  
Map Key: 3rd/ 1-5-008:001 por., as shown on the attached maps labeled Exhibits A and  
B.

AREA:

1.503 acres : well and reservoir site  
2.235 acres: access and utility easement  
3.738 acres, more or less.

ZONING:

State Land Use District: Agriculture

County of Hawaii CZO: Agriculture-20A

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Governor's Executive Order No. 4143 setting aside 3,738 acres to the Water Board of the County of Hawaii for Makuu well and reservoir site and access and utility easement purposes.

PURPOSE OF SET ASIDE:

Makuu well and reservoir site and access and utility easement purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Department of Hawaiian Home Lands, in coordination with the Water Board of the County of Hawaii, was issued a Final Environmental Assessment with a Finding of No Significant Impact, which was published in the Office of Environmental Quality Control's Environmental Notice of June 8, 2004.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Process and obtain subdivision at Applicant's own cost.
- 2) Consider the recommendations of the Commission on Water Resource Management to coordinate with the County Department of Water Supply on the incorporation of the project into the County's Water Use and Development Plan, and to coordinate with DLNR's Engineering Division on the incorporation of the project into State Water Projects Plan.
- 3) Obtain pump installation permit from the Commission on Water Resource Management, along with any other required government permits or approvals.

REMARKS:

At its meeting of July 30, 2004, Item D-5, the Board approved the set-aside of the subject land to the Water Board of the County of Hawaii (WBCOH) for the development of the

Makuu Well and Reservoir Site in coordination with the Department of Hawaiian Home Lands (DHHL). DHHL had identified the need to develop additional potable water for its Makuu Farm and Agricultural Lots back in 1996. The plan before the Board in 2004 was for the water system to be built and then dedicated to WBCOH. The Board action of July 30, 2004 included the issuance of an immediate construction and management right-of-entry to DHHL and WBCOH for the well and reservoir site.

On August 2, 2004, Land Division issued the Board-approved right-of-entry and construction work commenced thereafter. By memorandum dated July 5, 2005, DHHL reported that the pilot hole for the well had been drilled to 900 feet. The water was tested and determined to be of potable quality. Development of the well stopped, however, due to lack of funding for the project.

On December 22, 2005, the subject land was set aside to WBCOH by Executive Order 4143. At that time, the construction and management right-of-entry to WBCOH and DHHL expired by its own terms.

By letter dated November 17, 2008, DHHL wrote to the Chairperson of the Department of Land and Natural Resources to support the forthcoming request of WBCOH for the cancellation of Executive Order No. 4143. DHHL explained that the subject land needed to be under the control of DHHL to facilitate the development of the well and reservoir. Specifically, the DHHL letter states that having the land under DHHL's control will allow DHHL "to partner with Na Kupaa O Kuhio, a non-profit corporation, and satisfy WBCOH's requirements for the construction of the Makuu Well." In further discussions with DHHL personnel, staff has been advised that the partnership arrangement will provide the necessary funding to complete development of the well, reservoir and related facilities.

By letter dated February 13, 2009, WBCOH wrote to request the cancellation of Executive Order No. 4143. The WBCOH letter stated: "We have had several meetings with [DHHL] to discuss the development of the Makuu Well; and based on these discussions, have determined that the land must be under the control of DHHL to facilitate the development of the Makuu Well."

In summary, the proposed use of the land has not changed. Rather, WBCOH and DHHL have determined that DHHL needs to have control of the land in order to secure funding for the completion of the well. DHHL therefore requests an executive order setting aside the land to it, as well as an immediate construction and management right-of-entry to the land for the project. DHHL confirms that, upon approval of this submittal and issuance of the right-of-entry, it will pursue and obtain final subdivision approval of the subject land.

Staff believes the cancellation of Executive Order No. 4143 and the transfer of control of the land to DHHL is appropriate to achieve the objective of the development of the well

and reservoir. To date, the proposed well, reservoir and appurtenant facilities represent the highest and best use of the area. No other agencies, interest groups or individuals have requested a lease over the subject area.

By memorandum dated March 13, 2009, staff solicited the agencies identified below for comment with the following results:

Agency	Date Received	Response
Dept. of Hawaiian Home Lands	3/30/09	No objections
DLNR – State Historic Preservation Division (SHPD)	3/27/09	SHPD accepted a limited cultural assessment for this project that found no historic properties; no historic sites were encountered during archeological monitoring of initial ground-altering activities.
DLNR – Commission on Water Resource Management	4/9/09	Recommends coordination with County Dept. of Water Supply to incorporate project into the County's Water Use and Development Plan, and coordination with DLNR's Engineering Division to incorporate project into State Water Projects Plan. Confirms construction of well in 2005, but notes that required pump installation permit has not issued.
Office of Hawaiian Affairs	NA	No response.
Planning Department	4/1/09	No objections.
Dept. of Public Works	3/19/09	No comments.
Dept. of Water Supply	3/25/09	No objections.
Fire Department	4/6/09	No comments.
Dept. of Environmental Management	3/18/09	No comments.
Dept. of Finance, Property Management Division	3/31/09	No comments.

In response to the comments received from the Commission on Water Resource Management (COWRM), staff has included the Applicant Requirements above that DHHL consider COWRM's recommendations and obtain any COWRM permits required for the project.

**RECOMMENDATION:** That the Board:

1. Approve of and recommend to the Governor issuance of an executive order canceling Governor's Executive Order No. 4143 and subject to the following:


- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Hawaiian Home Lands under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
  - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Grant an immediate construction and management right-of-entry to the Department of Hawaiian Home Lands, its consultants, contractors, and/or persons acting for or on its behalf, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
  - A. The standard terms and conditions of the most current construction and management right-of-entry form, as may be amended from time to time;
  - B. This right-of-entry is effective upon Land Board approval and shall continue until the executive order document is issued; and

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- C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.

Respectfully Submitted,



 Kevin E. Moore  
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



